

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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FERRILL JOSEPH VOLPICELLI,

Case No. 3:10-cv-00005-RCJ-CLB

Petitioner,

ORDER

v.

JACK PALMER, *et al.*,

Respondents.

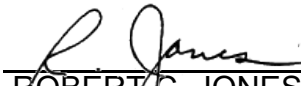
On April 30, 2015, this court entered a final order and judgment denying Ferrill Joseph Volpicelli's petition for writ of habeas corpus on the merits (ECF No. 58). On appeal, the United States Court of Appeals for the Ninth Circuit denied Volpicelli's request for a certificate of appealability and the United States Supreme Court denied his petition for writ of certiorari (ECF Nos. 62, 64). On April 5, 2021, Volpicelli filed a motion for relief from judgment under Fed. R. Civ. P. 60(b), which this court denied (ECF Nos. 66, 84). On January 19, 2022, Volpicelli filed a motion to alter or amend judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, which this court denied (ECF No. 85).

Volpicelli filed a notice of appeal (ECF No. 90). The Ninth Circuit remanded the case to this court for the limited purpose of granting or denying a certificate of appealability (ECF No. 92). This court's order denying the motion to alter or amend judgment is a final order adverse to the petitioner. As such, Rule 11 of the Rules Governing Section 2254 Cases requires this court to issue or deny a certificate of appealability (COA). Pursuant to 28 U.S.C. § 2253(c)(2), a COA may issue only when

1 the petitioner "has made a substantial showing of the denial of a constitutional right."
2 With respect to claims rejected on the merits, a petitioner "must demonstrate that
3 reasonable jurists would find the district court's assessment of the constitutional claims
4 debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citing *Barefoot v.*
5 *Estelle*, 463 U.S. 880, 893 & n.4 (1983)). For procedural rulings, a COA will issue only if
6 reasonable jurists could debate (1) whether the petition states a valid claim of the denial
7 of a constitutional right and (2) whether the court's procedural ruling was correct. *Id.*
8 Having reviewed its determinations and rulings in adjudicating Volpicelli's motion, the
9 court finds that none of those rulings meets the *Slack* standard. The court therefore
10 declines to issue a certificate of appealability for its resolution of Volpicelli's motion.

11 **IT IS THEREFORE ORDERED** that a certificate of appealability is denied.

12
13 April 19, 2022.

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15 ROBERT C. JONES
16 UNITED STATES DISTRICT JUDGE
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